No. 16494

United States Court of Appeals

FOR THE NINTH CIRCUIT

WILLIE A. DAVIS,

Appellant,

vs.

AETNA LIFE INSURANCE COMPANY, CHARLES S. SWANEGAN, DAISY SWANEGAN, and LLOYD W. SWANEGAN, as Administrator,

Appellees.

Upon Appeal From the United States District Court
Southern District of California
Southern Division

APPELLEES' BRIEF

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STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING BASIS FOR JURISDICTION

This case was commenced by Aetna Life Insurance Company by the filing of a complaint for Interpleader in the United States District Court, Southern District of California, Southern Division. The jurisdiction of the court was based on diversity of citizenship and the fact that the amount involved was in excess of $3,000 exclusive of interest and costs of suit.

Upon motions for summary judgment by defendants Charles S. Swanegan and Daisy Swanegan and defendant Lloyd W. Swanegan, as Administrator of the Estate of Sylvia Swanegan Davis, the District Court entered summary judgment against the appellant.

STATEMENT OF THE CASE

Appellees adopt the statement of the case presented in Appellant's Opening Brief saving therefrom and excepting to the fact that appellant "was afforded no opportunity to contest the granting of the motion. . . " (Appellant's Brief, page 3.)

ARGUMENT

A. THE DISTRICT COURT HAD NO DUTY TO ASCERTAIN THE FACTS CONCERNING THE HOMICIDE.

The appellant, Willie A. Davis, was duly served with all pleadings, notices, motions, and other documents in the instant case. The issue of the voluntariness of the

homicide was not raised by the appellant prior to or at the time of summary judgment. The appellant apparently now contends upon appeal that he was deprived of some right because he "was not represented by counsel in the District Court, was confined in prison and was not advised that he could give evidence or even file an affidavit concerning the events which caused the death of his wife". (Appellant's Brief, p. 5.) At no time was appellant deprived of the right to retain counsel of his own choosing in this matter. The fact that he was confined in a prison of the State of California did not preclude him from appearing and offering testimony or evidence in this matter. California Code of Civil Procedure, Section 1995; California Penal Code, Section 2623. The entire file of this case in the District Court (now the transcript on this appeal) is replete with affidavits and motions which were, in fact, filed by the appellant.

The fact that the appellant failed to make out a defense to the interpleader action, failed to avail himself of the opportunity to retain counsel (which could have been done on a contingency fee basis), and failed to avail himself of the opportunity to appear in the matter should not warrant this court awarding a reversal of the summary judgment, which would, in effect, give the appellant another chance to take advantage of his prior omissions.

B. THE PROVISIONS OF THE CALIFORNIA PROBATE CODE CONCERNING SUCCESSION PROCLAIM THE PUBLIC POLICY OF THE STATE OF CALIFORNIA.

The public policy of the State of California in regards to the succession of persons who have voluntarily

killed a relative is clearly and concisely proclaimed in Section 258 of the California Probate Code. This section provides:

> "No person convicted of the murder or voluntary manslaughter of the decedent shall be entitled to any portion of the estate; but the portion thereof to which he would otherwise be entitled to succeed goes to the other persons entitled thereto under the provision of this chapter." (Emphasis added.)

This section, when originally enacted, included only conviction of the crime of murder. In 1955 the section was amended to place voluntary manslaughter in the same category as murder. Review of 1955 Legislation 144 (1955).

Estate of Lysholm, 79 Cal. App. 2d 467, 179 P. 2d 833 (1947) was decided prior to the 1955 amendment, yet the rationale of this case is that a mere conviction, without more, precludes a person convicted of voluntary manslaughter from participating in the insurance proceeds on the life of his deceased victim. The case involved a husband convicted of manslaughter in the killing of his wife and, while the court determined that Section 258 of the California Probate Code did not apply because manslaughter was not expressly provided for therein, the court stated "if there be a conviction of murder, then neither the murderer nor his heirs have any rights to the insurance money". (Emphasis added.) This is a direct indication that the court construes Section 258 of the California Probate Code to include within its terms the public policy of the state in respect to insurance as well as general succession in probate. See also Beck vs. West Coast Life Insurance Co., 38 Cal. 2d 643, 241 P. 2d

544 (1952); Drown vs. New Amsterdam Casualty Co., 175 Cal. 21, 165 Pac. 5 (1917).

> "A beneficiary under a life insurance policy who murders the insured may neither receive nor retain the benefits of the policy, since it would be unconscionable to allow him to profit from his own wrong. Under this rule, where one insures his own life for the benefit of another person, and the beneficiary murders or unlawfully kills the insured, public policy will not allow such beneficiary to recover on the policy." (Emphasis added.) 28 Cal. Jur. 2d, Insurance §569, p. 828.

The most recent case construing Section 258 of the California Probate Code is Abbey vs. Lord, 168 Cal. App. 2d 499, 336 P. 2d 226 (1959). In this case a husband killed his wife, entered a plea of guilty to manslaughter and the court determined the same to be voluntary. The administrator of the deceased wife's estate brought a quiet title action to establish a constructive trust in property held jointly by the husband and wife. The court held that Section 258 of the California Probate Code was not directly applicable but that the 1955 amendment to that section clearly established that the Legislature does not favor the policy of giving property benefits to murderers or persons convicted of voluntary manslaughter. The opinion indicates that the case was decided on the mere record of conviction and nothing more.

The cases of Prudential Insurance Co. of America vs. Harrison, 106 Fed. Supp. 419 (S. D. Cal. 1952) and Manufacturers Life Insurance Co. vs. Moore, 116 Fed. Supp. 171 (S. D. Cal. 1953) cited by appellant are clearly distinguishable from the instant case. In the Harrison

case the husband had been charged with the murder of his wife but the court in the criminal case accepted a plea of guilty to manslaughter and declined to classify the manslaughter as either voluntary or involuntary. The court in the Harrison case made an independent determination of the facts of the homicide, finding that California Probate Code Section 258 was inapplicable from its language. The court rejected Section 258 because the case was not a murder case and because the issue was not a probate matter but concerned insurance proceeds. It is submitted that rejection of Section 258 was only necessary because of its then existing language. In Beck vs. West Coast Life Insurance Co., 38 Cal. 2d 643, 241 P. 2d 544 (1952), the court stated:

> "In the case of intestate succession there is a specific statutory provision preventing a convicted murderer from succeeding to any part of the estate of his victim and providing how the murderer's share should be distributed. (Probate Code, Section 258.) Although there is no such specific provision governing the disposition of the proceeds of life insurance, it may be contended that the public policy expressed in the Probate Code prevents the passage of either equitable or legal title to the murderer."

The determination of the facts surrounding the homicide was due only to the fact that a prior determination of voluntariness had not been made. In the instant case there has been a judgment of conviction of voluntary manslaughter and the applicable language of Section 258 of the California Probate Code is the present wording reflecting the 1955 amendment.

The Moore case again involves an unclassified manslaughter in a case decided prior to the 1955 amendment of Section 258. Again there was necessity for an independent determination of the facts of the homicide because there was no conviction of record which would be encompassed within an expressed public policy of this state as then declared by statute. The Court in the Moore case then proceeded to relate its findings on the issue of the homicide and came to a conclusion that indicates the homicide to be voluntary manslaughter. Such independent determination is unnecessary in the instant case due to the fact that the plea of guilty and judgment of conviction are for voluntary manslaughter and such is now expressly included within the wording of California Probate Code Section 258.

The conviction of voluntary manslaughter standing alone is proof that Willie A. Davis feloniously killed his wife. There is general agreement that public policy precludes a beneficiary who has feloniously killed the insured from recovering the proceeds of the insurance under the insurance contract. Anno: Killing of Ancestor--Succession, Section 17, 39 A. L. R. 2d 500.

In each and every case that appellant has cited in his brief and in all of the cases found by appellee, the courts have used California Civil Code Sections 2224 and 3517 to preclude the one guilty of voluntary manslaughter or murder from sharing the insurance proceeds of his or her ancestor. Section 3517 provides: "No one can take advantage of his own wrong". One who has been convicted of the voluntary manslaughter of the person on whose life the insurance was carried is certainly a person attempting to take advantage of his own wrong. It is submitted that the conviction, without more, amply

justifies a court in entering summary judgment that such convicted person take nothing by way of insurance on the life of his victim. The Harrison and Moore cases, supra, were decided as they were because a determination had not been made of the degree of manslaughter for which the conviction stood. In the instant case there is no dispute that Willie A. Davis pleaded guilty to and stands convicted of voluntary manslaughter. It would be folly to declare that a rule of law dictates that in a civil case a court must disregard the conviction and redetermine the merits of the criminal case to ascertain whether or not the felon is attempting to profit by a wrong for which he already stands convicted.

CONCLUSION

Appellees respectfully submit that the foregoing authorities amply support the correctness of the decision of the District Court given by Summary Judgment in this matter and submit that such judgment must be affirmed.

DATED: January 21, 1960
San Diego, California.

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